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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,367	07/31/2000	Michael Casson Bailey	GB9-2000-0083-US1	4169

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EXAMINER	
BULLOCK JR, LEWIS ALEXANDER	
ART UNIT	**PAPER NUMBER**
2195	

DATE MAILED: 01/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/628,367	BAILEY ET AL.	
	Examiner	Art Unit	
	Lewis A. Bullock, Jr.	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 July 2000* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. In view of the supplemental appeal brief filed on October 18, 2005, PROSECUTION IS HEREBY REOPENED. The non-final rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9 and 10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The cited claims detail a program product embodied in a signal-bearing medium wherein the medium is transmission medium. Transmission medium includes wireless techniques, including but not limited to

microwave infrared or other transmission techniques (pg. 14, lines 1-10). Therefore, the cited claims are non-statutory as not being tangible.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over CURTIS (U.S. Patent 5,896,531) in view of YOKOTE (U.S. Patent 6,105,074).

As to claim 1, CURTIS teaches a method for progressively improving a fit of a pool of reusable environments to requirements of programs in a computer system, the method comprising steps of: providing a first environment (OME) for a first program (task) (col. 4, lines 38-56; col. 1, lines 55 – col. 2, line 2); responsive to initiation of a second program (task), making a determination whether creation of a new environment is a best response (via determining whether a reusable OME is available and whether it is compatible with the task) (col. 5, lines 46 – col. 6, line 6); responsive to a determination that creation of a new environment is a best response, creating a new environment for the second program (via determining that a reusable OME is not available or not compatible, starting a new OME) (col. 6, lines 30-42); and responsive to a determination that creating a new environment is not a best response, testing the pool for a best fit environment (via determining reusable environments are available and

whether the environments support the task such that the task is linked to the environment) (col. 7, lines 33-56). However, CURTIS does not teach the step of adding elements to the best fit environment to match requirements of the second program, unless the best fit environment already matches the requirements of the second program.

YOKOTE teaches providing a best fit program environment and adding elements to the best fit environment to match requirements of the second program, unless the best fit environment already matches the requirements of the second program (via incrementally sending executing environment objects to the execution environment to be added to the environment and thereby continue executing the downloaded application, i.e. task) (col. 1, line 66 – col. 2, line 21; col. 11, line 39 – col. 12, line 30; col. 17, lines 63-67; col. 18, line 1-4; col. 18, lines 15-45). Therefore, it would be obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of CURTIS with the teachings of YOKOTE in order to facilitate decrease the time for program development by providing portions for the device driver or application independently from the OS or type of computer (col. 4, lines 15-67; col. 1, lines 46-49).

As to claim 2, CURTIS teaches at least one of the first, new and best fit environments is an execution environment (OME) (col. 4, lines 44-56; col. 7, lines 33-56; col. 5, lines 46 – col. 6, line 6; col. 6, lines 30-42).

As to claim 3, CURTIS teaches the execution environment is preinitialized (col. 4, lines 38-43; col. 3, line 55-64; col. 4, lines 8-17).

As to claim 4, CURTIS teaches the at least one of the first, new, and best fit environments is eligible to be deleted (via discarding the OME at a later time thereby freeing up of the reusable OME storage and the deletion of the reference to the OME) (col. 6, lines 7-27; col. 8, lines 36-49).

As to claim 5, CURTIS teaches at least one least recently used of the first, new and best fit environments is eligible to be deleted (via determining that the OME cannot be reusable or cannot be changed to active and discarding the OME at a later time thereby freeing up of the reusable OME storage and the deletion of the reference to the OME) (col. 6, lines 7-27; col. 8, lines 36-49).

As to claim 6, YOKOTE teaches the elements are parameters of at least one of the first, the new, and the best fit environments (environment objects) (via incrementally sending executing environment objects to the execution environment to be added to the environment and thereby continue executing the downloaded application, i.e. task) (col. 1, line 66 – col. 2, line 21; col. 11, line 39 – col. 12, line 30; col. 17, lines 63-67; col. 18, line 1-4; col. 18, lines 15-45).

As to claims 7 and 8, YOKOTE teaches the step of responsive to initiation of a second program, making a determination whether creation of a new environment is a best response (via retrieving the list and determining whether first an OME is available and if one is, whether it can execute the task and if not, remove the selected OME and add another OME) (col. 7, line 33 – col. 8, line 13). It would be obvious to one of ordinary skill in the art that retrieving the list and making the determining whether the OME is available and can execute the task such that if it cannot to remove the current OME and create one that can obviously tests the OME. The list is already at its maximum size since if the OME cannot execute the task it is removed and another put back in its place.

As to claims 9 and 10, reference is made to a program product on a signal medium that corresponds to the method of claim 1 and is therefore met by the rejection of claim 1 above.

As to claims 11-18, reference is made to a system that corresponds to the method of claims 1-8 and is therefore met by the rejection of claims 1-8 above.

Important Observation

5. The exclusion rule of commonly owned / assigned prior art under 103c **does not** apply when prior art qualifies under 102a, 102b, 102c, or 102d. The exclusion rule **only**

qualifies to prior art under 102e, 102f or 102g. The examiner refers Applicant to M.P.E.P. 2146. Therefore, the exclusion rule applies to prior art reference Kaczmarski (U.S. Patent 6,448,981). It would not apply to Curtis (U.S. Patent 5,896,531) which is a 102b, i.e. statutory bar, type of prior art. In addition, there is no evidence of a joint research agreement or any argument of such to exclude the prior art under section 2 and 3 of 103c.

Response to Arguments

6. Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lewis A. Bullock, Jr. whose telephone number is (571) 272-3759. The examiner can normally be reached on Monday-Friday, 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 23, 2006

LEWIS A. BULLOCK, JR.
PRIMARY EXAMINER

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